

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ANDREW BALK and LISA BALK,

Plaintiffs,

v.

DECISION AND ORDER
09-CV-249A

FEUERSTEIN & SMITH, LLP,

Defendant.

This case was referred to Magistrate Judge Hugh B. Scott pursuant to 28 U.S.C. § 636(b)(1). On October 8, 2010, defendant filed a motion for summary judgment (Dkt. No. 34). On February 18, 2011, Magistrate Judge Scott filed a Report and Recommendation (Dkt. No. 43), recommending that defendant's motion for summary judgment be denied.

Defendant filed objections to the Report and Recommendation on March 18, 2011. Plaintiffs filed responses to defendant's objections on March 25, 2011. The Court has deemed oral argument unnecessary and has considered the motion submitted on papers pursuant to Rule 78(b) of the Federal Rules of Civil Procedure.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a *de novo* determination of those portions of the Report and Recommendation to which objections have been made. Upon a *de novo* review of the Report and Recommendation, and after reviewing the submissions from the parties, the

Court adopts the proposed findings of the Report and Recommendation. Among other points, Magistrate Judge Scott concluded correctly that collateral estoppel does not apply here because FDCPA violations can be separated from underlying state litigation. *Cf., e.g., Sprinkle v. SB&C Ltd.*, 472 F. Supp. 2d 1235, 1242 (W.D. Wash. 2006) (“The plaintiffs’ FDCPA arguments were neither raised nor decided by the Whatcom County District Court. The present lawsuit challenges debt collection practices that *led* to the judgment, not the judgment itself.”); *Orloff v. Syndicated Office Sys.*, No. Civ.A.00-5355, 2003 WL 22100868, at *2 (E.D. Pa. 2003) (“The Defendants’ right to pursue their state claim is not dependent on the outcome of this litigation. Evidence of Plaintiff’s failure to pay Defendants money owed to them has no relevance on the issue of whether the Defendants’ actions in collecting the debt violated federal law.”).

Accordingly, for the reasons set forth in Magistrate Judge Scott’s Report and Recommendation, the Court denies defendant’s motion for summary judgment (Dkt. No. 34).

This case is referred back to Magistrate Judge Scott for further proceedings.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: April 25, 2011